

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 222 of 2000

in

SPECIAL CIVIL APPLICATION No 142 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRA CHHABILDAS JAYSWAL

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Appellant

MS HARSHA DEVANI ld.AGP for Respondents

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE R.R.TRIPATHI

Date of decision: 28/08/2000

ORAL JUDGEMENT (per M.R.Calla, J.)

This Letters Patent Appeal is directed against the judgment and order dated 8th May 2000 passed by the learned Single Judge in Special Civil Application No.142 of 2000 whereby the Special Civil Application had been rejected and the Rule was discharged. Through the Special Civil Application, the present appellant had challenged the detention order dated 19th December 1999 passed against him under Sec.3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985.

2. Along with the detention order dated 19th December 1999, the grounds of detention were enclosed. In the grounds of detention, it is mentioned that a criminal case under the Bombay Prohibition Act was registered against the appellant and that the appellant was a head strong person and was engaged in the business of unauthorised English liquor from Maharashtra, Madhya Pradesh and Rajasthan. It was also mentioned that for the purpose of carrying on this unauthorised business, the petitioner was also resorting to violence, and threatening the persons and creating an atmosphere of terror. The detaining authority then made reference to the statements of three witnesses with regard to the incidents dated 7th October 1999, 23rd October 1999 and 3rd November 1999.

3. The learned Single Judge has dealt with the arguments raised on behalf of the petitioner with regard to the improper exercise of powers under Sec.9(2) of the PASA Act and for the reasons stated in para 7 of the impugned judgment, he has not accepted the contention raised on behalf of the petitioner with regard to the improper exercise of powers under Sec.9(2). The learned Single Judge has also rejected the other contentions with regard to delay in deciding the representation and that certain pages at 27, 28 and 29 in the compilation of the documents which were supplied with the detention order were not legible and that the statements of the witnesses recorded under Sec.161 of the Code of Criminal Procedure with regard to the criminal case had not been supplied to the detenu though demanded. The learned Single Judge has rejected the contention about the illegibility of the pages nos.27, 28 and 29 as recorded on the basis of the reply which was filed by the respondents that no such statements of the witnesses, namely, Narendra, Sunil and Bhavin were recorded under Sec.161 of the Code of Criminal Procedure and therefore, there is no question of

supplying the same.

4. However, learned Counsel for the appellant has laid stress on the ground that there was an inordinate and unexplained delay in considering the representation. It has been submitted that the representation was made on 6th January 2000 and was received by the detaining authority on 7th January 2000 and forwarded to the State Govt. on 9th January 2000. However, the Govt. received it on 13th January 2000, 14th January 2000 was a holiday, 16th January 2000 was also a holiday being Sunday and on 18th January 2000, the representation was rejected. The learned Single Judge has found that the process of consideration of this representation has effectively taken only two working days, i.e. 15th January 2000 and 17th January 2000 and therefore, the ground as was advanced by the petitioner could not be accepted.

5. Learned Counsel for the appellant has argued before us that the proposal with regard to the detention had been made by the sponsoring authority on 30th November 1999 whereas the statements of the three witnesses had been recorded on 25th, 27th and 29th November 1999. It has also been submitted that these statements were verified by the detaining authority on 17th December 1999 and 18th December 1999 and the detention order was passed on 19th November 1999. On this basis, it was contended that the detaining authority had no sufficient time to apply his mind before passing the detention order. In support of this submission, she has placed reliance on a decision in the case of Kalidas Kahar v. State of Gujarat and ors. reported in 1993 (2) GLR 1659. This contention was not raised before the learned Single Judge, but in such matters, when the detention orders are challenged, such arguments can be permitted to be raised even if not raised before the Single Judge and therefore, in order to ascertain the factual position, we called upon the learned AGP to give the exact dates. While it is not disputed before us that the proposal was made by the sponsoring authority on 30th November 1999, it was submitted that this proposal had been forwarded to the detaining authority on 1st December 1999 and it is also not disputed that the statements of the three witnesses were recorded on 25th November, 1999, 27th November 1999 and 29th November 1999 and the same were verified by the detaining authority on 17th December 1999 and 18th December 1999 and the detention order was passed on 19th December 1999. However, it was not clear from the pleadings as to on what date the proposal sent by the sponsoring authority was in fact received by the detaining authority and for that purpose, learned AGP was

granted time to produce the record. Even on the basis of the record, it could not be pointed out as to on what date the proposal was received by the detaining authority and therefore, we called upon the learned AGP to produce the Inward Register where such proposals are inwarded by the detaining authority. From the Inward Register as has been produced before us also it has not been possible to make out as to on what date the proposal was received by the detaining authority because we do not find that the entries have been made datewise. It is of course true that the relevant entry is at Sr.No.118 made in ink in Gujarati script. Below it, it has been marked by a pencil in English as, "A.R. on 1.12.99 at 20/00 hrs." The learned AGP has today pointed out before us from the affidavit-in-reply dated 29th April 2000 as had been filed in the Special Civil Application with reference to para 7 thereof that the proposal from the concerned police station was sent by the Police Inspector vide communication dated 1.12.99 and on receipt of the proposal, at the time of scrutiny of the said proposal certain details were lacking and therefore, the detaining authority says that vide communication dated 4th December 1999, the sponsoring authority was asked to collect some documents and the same were sent vide its communication dated 13th December 1999 and after receiving the aforesaid documents, the material was carefully considered and the detaining authority felt subjectively satisfied about the need of passing the order of detention and there is no question of any delay in passing the order of detention as contended by the appellant. The detaining authority goes on to say that before passing the detention order, he wanted to satisfy himself about the correctness of the statements recorded by the sponsoring authority and therefore, he had called the witnesses before him and verified their statements and that there is no question of time undue time between the verification and the passing the order of detention. However, the fact stands established that the statements were verified on 17th and 18th December 1999 and just on the next date, i.e. 19th December 1999, the detention order was passed as was the case in the case of Kalidas Kahar (supra) on which the reliance has been placed by the appellant. It was held that the detaining authority must have sufficient time to examine the possibility of exercising powers under Sec.9(2). In that case, the proposal was made on 16th October 1992 and the detention order was passed on 17th October 1992 and it was held to be a wrong exercise of power under Sec.9(2) affecting the detenu's right of making an effective representation under Article 22(5). The facts of this case are clearly distinguishable because in the case of Kalidas Kahar

(supra) the proposal was made on 16th October 1992 and the order was passed on 17th October 1992 whereas in the present case, the proposal had been made earlier on 30th November 1999, the same appears to have been received by the detaining authority on 4th December 1999 when some clarification was sought from the sponsoring authority and thereafter the clarification was received on 13th December 1999, the detaining authority then called the witnesses for verification on 17th December 1999 and 18th December 1999 and therefore, it cannot be said that there was no sufficient time with the detaining authority to apply his mind to the conclusion for passing the detention order. In the facts of the present case, it also cannot be said that there was any inordinate delay in passing the detention order.

6. Learned Counsel for the appellant then submitted that even if the grounds as mentioned in the detention order are taken to be true, it cannot be said that it is a case of breach of the public order and at the most, the material on which the reliance has been placed by the detaining authority amounts to the breach of law and order only and so there was no question of passing the detention order against the present appellant. This point was also not taken or argued before the learned Single Judge. However, we have considered the submission as has been made by the learned Counsel for the appellant. As per the grounds of detention, the criminal case which was registered against the appellant is a case under the Bombay Prohibition Act and the statements of witnesses which have been recorded with regard to the three incidents dated 7th October 1999, 23rd October 1999 and 3rd November 1999 also do not disclose that the appellant herein had become a threat to the society and that the entire tempo of the society stood threatened and disturbed on account of such activities as have been alleged against the appellant. This question has been examined in number of cases by the Supreme Court as well as by this Court and a view has been taken that such activities do not amount to the breach of public order so as to justify the detention. Since this appeal can be decided on this point alone, it is not necessary to deal with other points excepts the points which we have already considered in the earlier part of this order.

7. Therefore, in our opinion, the impugned order dated 8th May 2000 passed by the learned Single Judge upholding the detention order cannot be sustained. The same is hereby set aside and the detention order dated 19th December 1999 is also set aside. This Letters Patent Appeal as well as the Special Civil Application

are hereby allowed. Accordingly, we direct that the appellant namely, Jitendra Chhabildas Jayswal, who is presently detained at Jamnagar District Jail, Jamnagar, in pursuance to the detention order dated 19th December 1999 shall be released forthwith, if not required in any other matter. Rule is made absolute.

(M.R. Calla, J.)

(R.R.Tripathi, J.)

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